December 15, 2003

Justices of the Michigan Supreme Court
P.O. Box 30052
Lansing, MI 489809

Re: Administrative File No. 2003-47 - Petition for Administrative Order or Court Rule Establishing Inactive Asbestos Docketing System

Dear Honorable Justices:

I have been involved in asbestos litigation since 1983. I am one of the lawyers that represented the Michigan schools in a successful class action lawsuit for the cost of removal of asbestos from most of the school districts in the state of Michigan. I have been a lawyer since 1971 and have represented school boards most of my career.

I have reviewed the petition filed in the above referenced matter which urges this Court to adopt the ABA standard for asbestosis. I think the ABA medical criteria for non-malignant asbestos disease is exceedingly harsh and misses the mark. It will exclude most people with a diagnosis of asbestosis.

Even the American Thoracic Society, back on April 23, 2003, criticized the ABA standard in a letter from their president, Thomas Martin, M.D., to Dennis Archer, then president-elect of the ABA. This letter is attached and should be posted with my comments.

Furthermore, what is being attempted by passage of this proposed court rule amounts to judicial legislating. The no-fault statute adopted for automobile cases 30 years ago was designed to limit the number of whiplash cases and was enacted by the Michigan legislature, not the Michigan Supreme Court. In a true legislative process, hearings take place, experts can be brought in, and ample time is utilized to weigh the issues carefully. All sides have the right to be part of the process with access to their state representatives and senators.

None of these Constitutional protections for the enactment of our laws will have been followed if the proposed court rule is adopted. Many victims of asbestosis will be disenfranchised and denied access to the courts. This will be true even if their statute of limitations are tolled, because the remainder of the country will be going forward with asbestosis cases and the funds available to compensate Michigan victims will be depleted before they can seek redress.

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April 23, 2003

Dennis Archer, JD
President-Elect
American Bar Association
740 15th Street, N.W.
Washington, DC 20005-1019

Dear Mr. Archer:

As president of the American Thoracic Society (ATS) I want to express our extreme concern with the medical criteria used in the American Bar Association policy: Asbestos Litigation Policy adopted in February 2003. The medical criteria used in the document do not reflect the current state of screening and diagnosis for asbestos-related diseases

The ATS is one of the leading organizations in the scientific and medical community regarding the diagnosis and treatment of asbestos related diseases.. The American Thoracic Society (ATS) founded in 1905, is an independently incorporated, international professional and scientific society which focuses on respiratory and critical care medicine. Today, the Society has approximately 13,500 members are engaged preventing and treating respiratory disease around the globe, through research, education, patient care and advocacy.

The ATS does not have a position on the need for, merits of or construction of asbestos litigation reform legislation. As physicians who diagnose, treat and research asbestos-related conditions, we are however committed to ensuring that appropriate medical criteria is used and applied in whatever legislative proposals move forward.

The ATS has the following concerns the medical criteria listed in the ABA Asbestos Litigation Report:

Existence of Asbestosis
Significant asbestosis can be present with an x-ray profusion less than 1/0 or even with a normal x-ray. Impairment from this asbestosis can be manifest by demonstrated decrease in diffusing capacity (DL) (with or without a decrease in forced vital capacity, FVC) or abnormality in ventilatory and gas exchange parameters on respiratory exercise testing. Diffusing capacity is available at any lung center, is standardized[1] and is known to be abnormal in interstitial lung disease (ILD) even when FVC and x-ray are normal.

1) American Thoracic Society. Single breath carbon monoxide diffusing capacity (transfer factor). Recommendations for a Standard Technique. Am. Rev. Resp. Dis. 1987; 136:1299.

Perversely, if DL is significantly decreased without a decrease in FVC, the x-ray standard requirement of the ABA standard (2/1) is greater that what is in common medical practice.

Impairment from asbestos can be manifest by the FVC when the x-ray is normal; such impairment is not admissible under the ABA proposal.

Asbestosis can be detected radiographically by CT scan when the x-ray is normal. CT scan is universally available in the U. S. and used by all pulmonolgists in a fuller assessment of ILD.

Pleural Scarring

The section on impairment from asbestos-related pleural scarring is vastly insufficient. Diffuse pleural scarring can be associated with greatly diminished FVC regardless of the extent or thickness of the scarring or its bilaterality[2]. It is therefore exclusionary to insist on "bilateral" diffuse pleural thickening of at least B/2.

Analysis of large numbers of patients with asbestos-related pleural scarring has shown that extensive circumscribed pleural scarring is associated with a significant decrement in FVC sufficient to bring about impairment in individual patients.

The ATS will soon be publishing a revised version of: The Diagnosis of Nonmalignant Diseases related to Asbestos. The revised document will provided the most recent data and professional recommendations on the definitions, diagnosis and treatment of nonmalignant asbestos-related diseases. The ATS strongly encourages the American Bar Association and other policy makers to consider this forthcoming document when establishing medical criteria in asbestos-related legislation.

Sincerely,

Thomas R. Martin

Thomas R. Martin, M.D.
President,
American Thoracic Society

Cc: Members of the House Judiciary Committee
Members of the Senate Judiciary Committee

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2) Lilis R, Miller A, Gaobald J et al. Pulmonary function and pleural fibrosis: quantitative relationships with an integrative index of pleural abnormalities. Am J Industr. Med 1991; 20:145.